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HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 2422 of 2003

Petitioner: Smt. Gita Devi, W/o Ram Charan, aged about 66 years, R/o Sattigudi Chowk, Raigarh, Tehsil & District: Raigarh (C.G.).

Versus

Respondents

1. The Board of Revenue, Chhattisgarh, Bilaspur (C.G.).
2. Suresh Kumar Agrawal, S/o Santlal Agrawal, R/o Kotra Road, Raigarh, Tehsil & Distt. Raigarh (C.G.).

POST FOR ORDER ON 12th SEPTEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

(53)

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Present:

Shri Prashant Mishra Advocate — For the petitioner

Before: Hon'ble Shri L.C. Bhadoo, J.

ORDER

(Passed on 17th September, 2003)

1. The petitioner has preferred this petition under Articles 226/227 of the Constitution of India by which she has challenged the order dated 15th July 2003, passed by the Board of Revenue, Chhattisgarh at Bilaspur in appeal No. 367/A-6/2002-2003.
2. The petitioner's petition is that respondent No.2 purchased her agricultural land by a sale deed dated 13-11-91 bearing Khasra Nos. 56/4, 56/5 and 56/6, area 0.009 hectare and 0.004 hectare from Khasra No. 56/7, total area was 0.050 hectare. However, the

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respondent No.2 by fraud and in a fraudulent manner entered the Khasra No. 58/9, area of 0.037 hectare in the said sale deed which was not sold to the respondent No.2 and thereafter respondent No.2 got his name mutated in the mutation proceedings before Tehsildar. The Tehsildar mutated the name of the respondent No.2 without following the procedure under the Madhya Pradesh Land Revenue Code and without informing the petitioner against which an appeal bearing No. 31/A-6/2002-2003 was filed in the year 2003 and the Sub Divisional Officer allowed the appeal and set-aside the mutation which was recorded by the Tehsildar.

3. On appeal by respondent No.2 before the Board of Revenue bearing No. 367/A-6/2002-2003, the Board of Revenue vide impugned order dated 15th July 2003 allowed the appeal and set-aside the order of the S.D.O. on the ground that the appeal before the S.D.O., Revenue, Raigarh was time barred as the same was filed after 11 years of the order of Tehsildar dated 29-2-92.

4. I have heard the learned counsel for the petitioner.

5. Learned counsel for the petitioner argued that the impugned order of the Board of Revenue is not correct as the delay was explained by the petitioner before the S.D.O. and the S.D.O. was satisfied that the mutation proceedings were effected in the absence of the petitioner, therefore, the impugned order of the Board of Revenue is liable to be set-aside which is contrary to law.

6. I have perused the impugned order as well as the order of the S.D.O. It is not disputed that the sale deed in question was executed on 13th November 1991 and the mutation proceedings were taken up in the year 1992 and the name of respondent No.2 was mutated on 29-2-92. A perusal of the order reveals that a notice was issued to the petitioner for 29-2-92 by the Patwari to appear before the Tehsildar and the said date was fixed for certification of the mutation proceedings. This notice was sent to the petitioner on 24-2-92 and it was entered at S. No. 8 in the register. A general notice regarding mutation was also issued by an advertisement and the same was advertised on 13-2-92 in which

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objections were invited up to 28-2-92. At page 8 the learned Board of Revenue has observed that both these proceedings were within the knowledge of the petitioner and the date for certification i.e. 29-2-92 was also informed to the petitioner and it has further been observed that there is nothing on record which shows that the petitioner made to enquires about the certification proceedings dated 29-2-92. Moreover, both these proceedings i.e. the notice which was sent to the petitioner and the advertisement bears the signatures of the petitioner, therefore, the petitioner was having the knowledge about this mutation proceedings.

7. Apart from that the S.D.O. passed a diversion order No. 80/A-2/1998-99 dated 22-6-99. The petitioner has not raised any objection in that proceeding also. Moreover, the petitioner moved an application before the Collector, Raigarh on 15-11-2000 in which she has mentioned about the certification of the mutation proceedings. The S.D.O. made an enquiry and in that connection the S.D.O. gave an intimation to the petitioner on 21-11-2000 which was made known to the petitioner on 15-11-2000. A civil suit was filed by the petitioner on 16-11-2000 in the Civil Court in which she has mentioned about the sale deed. Therefore, the petitioner was very much within the knowledge and the Board of Revenue reached to the conclusion that the petitioner has not been able to explain the delay of each day in filing the appeal before the S.D.O., Revenue and the ground shown by the petitioner that she came to know through her son, when her son was enquiring into some other matters, her son came to know about this fact and through him she came to know on 4-1-2003 cannot be believed.

8. In view of the above facts, when the petitioner was within the knowledge about the mutation proceedings since beginning that was effected after issuing an advertisement and personal notice to the petitioner, thereafter the petitioner filed a Civil Suit in the year 2000 and diversion proceedings were also effected by the S.D.O. in the year 1999, therefore, the conclusion of the Board of Revenue that the appeal filed by the petitioner before the S.D.O.

Revenue was time barred and the conclusion of the Revenue Board is neither illegal nor erroneous as the petitioner was not able to explain the delay in order to get the benefit of Section 5 of the Limitation Act.

9. Moreover, the petitioner has already filed a civil suit before the Civil Court to cancel the sale deed in respect of Khasra No. 58/9, area 0.037 hectare and which is pending before the Civil Court which the learned counsel for the petitioner admitted during the course of arguments, therefore, the Board of Revenue has not exercised any jurisdiction illegally and passed any order beyond the jurisdiction which are vested in the Board of Revenue, as such the petitioner has not been able to make out the case for interference by this Court under Articles 226/227 of the Constitution of India.

10. The petition is without force and the same is devoid of merit. Accordingly, the petition is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Barve*